

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 979

Introduced by Assembly Member Tom Berryhill

February 27, 2009

An act to add Sections 1020 and 1021 to the Fish and Game Code, relating to fish and game.

LEGISLATIVE COUNSEL'S DIGEST

AB 979, as amended, Tom Berryhill. Hunting or fishing: local regulation.

The California Constitution provides for the delegation to the Fish and Game Commission of powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Game exercises various functions with regard to the taking of fish and game. Under existing law, a city or county exercises certain limited authority with regard to the regulation of fish and game for the protection of public health and safety.

This bill would provide that the state fully occupies the field of hunting and fishing. The bill would also provide that unless otherwise expressly authorized by the Fish and Game Code or other state or federal law, the commission and the department are the only entities that may adopt or promulgate regulations regarding the taking of fish and game on any lands or waters within the state, *except as specified*.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1020 is added to the Fish and Game Code, to read:

1020. (a) The Legislature finds and declares all of the following:

(1) The California Supreme Court in *In re Makings* (1927) 200 Cal. 474, determined that Section 25½ of Article IV of the California Constitution, as currently set forth in Section 20 of Article IV, prohibits local governmental entities from regulating, or interfering with, fish and game matters and places this responsibility with the Legislature in order to conserve California's fish and wildlife populations and permit the largest use of fish and game compatible with the reasonable protection thereof.

(2) The Fish and Game Commission was established in 1870 to assist in the science-based management of California's fish and wildlife resources. The California Constitution permits the Legislature to delegate to the commission certain powers relating to the management of fish and game, and the Legislature has delegated to the commission regulatory powers over the taking and possession of fish and game, as set forth in this code.

(3) Hunting and fishing are statistically among the safest outdoor recreational activities, particularly as they relate to impacts on the general public, and are already well regulated by the state through mandatory safety requirements, weapons laws, and regulations adopted by the commission. Additional local regulation is both unnecessary and significantly impedes the uniform, science-based administration of fish and game laws. Hunting and fishing activities are also compatible with other recreational uses on many public lands and waters throughout the state.

(b) In enacting this section and Section 1021, it is the intent of the Legislature to affirm, subject to applicable federal law, the exclusive legal authority granted to the commission and the department with regard to the taking and possession of fish and game and thereby ensure necessary comprehensive statewide control by the commission and the department over all fish and game matters for wildlife conservation purposes and the protection of, and access to, hunting and fishing opportunities for the public. It is further the intent of the Legislature to protect public health and safety in those rare and limited instances where state laws and

1 regulations have not already provided a reasonable level of public
2 ~~health and safety at those times and places.~~ *health and safety by*
3 *allowing a local ordinance to affect the taking of fish and game*
4 *within the territorial jurisdiction of the local agency, if the*
5 *ordinance is both necessary to protect public health and safety*
6 *and only incidentally affects the state preempted field of hunting*
7 *and fishing. The ordinance shall not indiscriminately extend or*
8 *apply to any area in which the taking of fish and game may occur*
9 *in a manner that does not endanger public health and safety or to*
10 *any lands or waters owned or managed by the state or federal*
11 *government.*

12 SEC. 2. Section 1021 is added to the Fish and Game Code, to
13 read:

14 1021. (a) The state fully occupies the ~~fields~~ *field* of hunting
15 and fishing pursuant to this code, regulations adopted by the
16 commission pursuant to this code, and Section 20 of Article IV of
17 the California Constitution, *and all local regulations are subject*
18 *to this section.*

19 (b) The commission, the department, or any other governmental
20 entity legally authorized to affect the taking of fish and game on
21 navigable waters held in public trust shall, to the extent possible,
22 ensure that the fishing and hunting rights of the public guaranteed
23 under Section 25 of Article I of, and Section 4 of Article X of, the
24 California Constitution, are protected in a manner consistent with
25 those provisions.

26 (c) Unless otherwise expressly authorized by this code or other
27 state or federal law, the commission and the department are the
28 only entities in this state that shall adopt or promulgate regulations
29 regarding the taking of fish and game on any lands or waters within
30 the state. This subdivision does not prohibit a private landowner
31 or his or her designee from restricting the taking of fish and game
32 on property that he or she owns in fee title, during the period of
33 ownership.